Jackson David Jones v Sara Resorts Sdn Bhd

HIGH COURT (KUCHING) — CIVIL SUIT NO 22–97 OF 1997(I)
MUHAMMAD KAMIL J
20 FEBRUARY 1999

Civil Procedure *— Payment out of court — Interim payment — Deposit into court ordered pending appeal — Retrial ordered upon appeal — Application for interim payment from deposit while awaiting appeal — Whether plaintiff's application is misconceived — Courts of Judicature Act 1964 s 25 — Rules of the High Court 1980 O 22A*

The plaintiff's application for summary judgment against the defendant was allowed upon appeal to the High Court against the decision of the deputy registrar. The defendant was ordered by the learned High Court judge to deposit into court the amount as claimed by the plaintiff pursuant to its appeal to the Court of Appeal against the learned judge's decision. The Court of Appeal reversed the High Court's decision and ordered a re-trial before another judge. The plaintiff subsequently filed an application pursuant to s 25A of the Courts of Judicature Act 1964 ('the Act') and O 22A of the Rules of the High Court 1980 ('the RHC') for interim payment. The defendant, on the other hand, requested the court to refund the sum deposited on the ground that the judgment against them had been reversed by the Court of Appeal.

Held, dismissing the plaintiff's application:

(1) The deposit into court was ordered conditional upon the defendant's appeal against the judgment of the learned High Court judge. It is a prerequisite before the appeal was made to the Court of Appeal. The instant case, however, is a re-hearing of the plaintiff's action; it is not continuous but quite separate from the initial action in the High Court. Section 25A(5) of the Act and O 22A r 1 of the RHC therefore, are inapplicable as they contemplate a situation where the proceedings are continuous (see p 403H–I).

(2) When the Court of Appeal reversed the judgment of the High Court and ordered a re-trial, the parties acquired status quo ante. The right to the money deposited remains with the defendant. The deposit pursuant to the appeal to the Court of Appeal is no longer sustainable, as a deposit is not a prerequisite in an appeal to the judge in chambers against the deputy registrar's decision. Therefore, the defendant has a right to the refund of the deposit which was made pursuant to the appeal to the Court of Appeal, which no longer exists. As the deposit is non-existent, the question of interim payment does not arise at all. Therefore, in the instant case, the application is misconceived (see pp 403H–I and 404D–F).

[Bahasa Malaysia summary

Permohonan plaintif untuk penghakiman terus terhadap defendan telah dibenarkan berikutan rayuan kepada Mahkamah Tinggi terhadap keputusan timbalan pendaftar. Defendan telah diperintahkan oleh hakim Mahkamah Tinggi yang bijaksana untuk mendepositkan jumlah yang dituntut oleh plaintif ke dalam mahkamah berikutan dengan rayuannya ke Mahkamah Rayuan terhadap keputusan hakim yang bijaksana tersebut. Mahkamah Rayuan telah mengakaskan keputusan Mahkamah Tinggi dan mengarahkan satu perbicaraan semula di hadapan seorang hakim yang lain. Plaintif seterusnya memfailkan satu permohonan mengikut s 25A Akta Mahkamah Kehakiman 1964 ('Akta tersebut') dan A 22A Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT') untuk bayaran interim. Defendan, sebaliknya, telah meminta mahkamah membayar balik jumlah yang telah didepositkan atas alasan bahawa penghakiman terhadapnya telah diakaskan oleh Mahkamah Rayuan.

Diputuskan, menolak permohonan plaintif:

(1) Deposit ke dalam mahkamah telah diperintahkan tertakluk kepada rayuan defendan terhadap penghakiman oleh hakim Mahkamah Tinggi yang bijaksana. Ia adalah diwajibkan sebelum rayuan tersebut dibuat kepada Mahkamah Rayuan. Kes ini, bagaimanapun, merupakan satu pendengaran semula tindakan plaintif; ia bukan bersambungan tetapi adalah berasingan daripada tindakan asal di Mahkamah Tinggi. Maka, s 25A(5) Akta tersebut dan A 22A k 1 KMT adalah tidak terpakai memandangkan peruntukan-peruntukan tersebut membayangkan satu situasi di mana prosiding-prosiding adalah bersambungan (lihat ms 403H–I).

(2) Bila Mahkamah Rayuan mengakaskan penghakiman Mahkamah Tinggi dan mengarahkan satu perbicaraan semula, pihak-pihak telah memperolehi satu 'status quo ante'. Hak kepada wang yang didepositkan kekal dengan defendan. Deposit tersebut yang berikutan dengan rayuan ke Mahkamah Rayuan tidak lagi boleh dikekalkan kerana satu deposit tidak diwajibkan dalam satu rayuan kepada hakim dalam kamar terhadap keputusan timbalan pendaftar. Oleh itu, defendan mepunyai hak kepada bayaran balik deposit tersebut yang dibuat berikutan dengan rayuan ke Mahkamah Rayuan, yang tidak lagi wujud. Oleh kerana deposit tersebut tidak lagi wujud, persoalan tentang bayaran interim tidak timbul sama sekali. Oleh yang demikian, dalam kes ini, permohonan ini adalah disalah tanggap (lihat ms 403H–I dan 404D–F).]

Notes

For a case on application for interim payment, see 2(2) *Mallal's Digest* (4th Ed, 1998 Reissue) para 3415.

Legislation referred to

Courts of Judicature Act 1964 s 25A(5)
Rules of the High Court 1980 O 22A r 1

Lim Heng Choo (*Lim & Lim*) for the plaintiff.
SY Chan (*Ee & Lim*) for the defendant.

Cur Adv Vult

Muhammad Kamil J: The plaintiff claimed against the defendant for a sum of RM471,789 ('the said sum') being arrears of salaries unpaid. Reversing the deputy registrar's decision, the learned High Court judge granted summary judgment for the said sum to the plaintiff and ordered the defendant to deposit the said sum in court pursuant to its appeal. On appeal, the Court of Appeal reversed the High Court's decision and ordered a re-trial before another judge.

This is the plaintiff's application under s 25A of the Courts of Judicature Act 1964 ('the Act') and O 22A of the Rules of the High Court 1980 ('the RHC') for an interim payment to the plaintiff or that the said sum deposited in court be continued to be kept in an interest-bearing fixed deposit pending the determination of the plaintiff's action. Mr Fabian Lim, counsel for the plaintiff in his affidavit in support of the application stated that the plaintiff's claim was based on the letter of offer dated 14 September 1995 and the only issue for trial is whether the letter of offer is issued by the defendant as agent for and on behalf of Asia Vacation Clubs Sdn Bhd. The plaintiff believed that he had a strong case. Further, the plaintiff had financial difficulties as he needed money to support his family in the United States of America.

The defendant had written a letter dated 16 October 1998 to the court, requesting for the said sum deposited in court to be refunded to them as the judgment against them had been quashed by the Court of Appeal. As the parties' position had reverted to status quo ante, it is right that the deposit should be returned to the defendant.

The deposit in court was ordered conditional upon the defendant's appeal against the judgment of the learned High Court Judge. It is a pre-requisite before the appeal was made to the Court of Appeal. Now, in the instant case, it is a re-hearing of the plaintiff's action; it is not continuous but quite separate from the initial action in the High Court. When the Court of Appeal reversed the judgment of the High Court and ordered a re-trial, the parties acquired status quo ante. The right to the money deposited remains with the defendant. As it were, what we have now is a repetition of the position where the High Court would hear again an appeal against the deputy registrar's decision. Under the circumstances, the deposit pursuant to the appeal to the Court of Appeal is no longer sustainable, as a deposit is not a pre-requisite in an appeal to the judge in chambers against the deputy registrar's decision. That being so, the correct thing to do is to return the deposit to the defendant; the defendant has a right to the refund of the deposit which was made pursuant to the appeal to the Court of Appeal, which no longer exists.

Section 25A(5) of the Courts of Judicature Act 1964 provides:

> (5) In this section 'interim payment', in relation to a party to any proceedings, means a payment on account of any damages, debt or other sum excluding any costs which that party may be held liable to pay to or for the benefit of another party to the proceedings if a final judgment or order of the Court in the proceeding is given or made in favour of that other party.

Order 22A r 1 of the Rules of the High Court 1980 provides:

> 1 In this Order —
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> 'interim payment', in relation to a defendant, means a payment on account of any damages, debt or other sum (excluding costs) which he may be held liable to pay to or for the benefit of the plaintiff, and any reference to the plaintiff or defendant includes a reference to any person who, for the purpose of the proceedings, acts as next friend of the plaintiff or guardian of the defendant.

The law under the Act and the RHC, contemplate a situation where the proceedings are continuous, eg in a claim for damages where the quantum is disputed.

As the deposit after this order has been made is non-existent, the question of interim payment does not arise at all. It appears that an interim payment under these provisions of the law is not applicable in this case. Therefore, this application is misconceived. I would dismiss the application with costs.

Application dismissed with costs.

Reported by Tan Kah Bee